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Friday, January 8, 2016

Via ECF

The Honorable Charles R. Breyer
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102

re: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC)

Dear Judge Breyer:

I write today as counsel in the case consolidated before this Court, *Millington et al. v. Volkswagen Group of America, Inc. et al.* Case No. 15-cv-05910-CRB. Following your instructions in Pretrial Order No. 2, with this letter I apply for positions on the Plaintiffs' Steering Committee for Jasper Ward and myself. As soon as the news of the deceptive and fraudulent conduct of Defendants became known, Mr. Ward and I began to form a group whose talents we wish to offer to the Court with this application.

Jasper Ward is a founding partner of a firm, Jones Ward PLC, that has been pre-eminent in plaintiffs' mass torts recoveries involving defective and unsafe products, like those at issue in this case. As his attached CV shows, he and I have worked successfully in litigating and settling complex consumer fraud class actions. Jasper and his firm separately represent thousands of clients across the country in products liability, class action and Multi-District Litigation cases. Jones/Ward is lead counsel in products liability and mass tort cases in more than 10 states, co-lead counsel for the first class action filed in Kentucky for Kentucky citizens owning property and businesses in Gulf States affected by the BP Oil Spill and he serves on a subcommittee in the BP MDL.

As co-counsel on *Millington*, Jasper and I have brought together a group of the former Attorneys General of 10 states, as well as Ariana Tadler, a partner of the Milberg firm. This unique group brings over 50 years of combined experience of these Attorneys General running the legal departments of their respective states. As Attorneys General, they litigated complex and large-stakes matters for their states, including consumer fraud, civil and criminal proceedings.

While I believe this alone is compelling reason to justify appointing these men and women to play a role in this important consumer litigation: the depth of experience of the *Millington* group goes beyond their running some of the largest law offices in the country as Attorneys Generals.

The group includes Rufus Edmisten, who before serving 10 years as the Attorney General of North Carolina served as Deputy Chief Counsel for the Senate Watergate Committee, where he

personally served the subpoena to the White House for the infamous Watergate tapes. The group also includes former U.S. Senator Roland W. Burris of Illinois who the New York Times recognized as a “a Low-Key Pioneer” when “he was the first African-American elected to statewide office in Illinois, as comptroller and later as attorney general.”¹

In addition, Robert Stephan served as Attorney General of Kansas for 16 years and was notably an activist consumer advocate and litigator. Marc Dann, as Attorney General of Ohio, brought dozens of class actions on behalf of consumers, including initiating securities fraud claims against the creators of mortgage-backed securities on behalf of Ohio’s public pension funds.

The group’s experience with litigating large, complex litigation is obvious. These lawyers have also settled landmark cases. For example: G. Oliver Koppell, who served in the New York State Assembly from 1970 through 1993, including Chairman of the Assembly Judiciary Committee, Chairman of the Environmental Conversation Committee, and New York Attorney General, settled the infamous “Love Canal” chemical contamination case for the state of New York. In private practice, General Koppell and I have worked together on consumer-oriented class actions for almost 20 years, resulting in over a quarter of a billion dollars in settlements and judgments for consumers.

In a similar vein: Ariana Tadler is a preeminent consumer class action attorney at a firm well recognized for its negotiating acumen. As a partner at Milberg, Ariana chairs Milberg’s E-Discovery Practice Group. Her depth of experience and expertise in electronic discovery is both unparalleled and well recognized. Ariana has served on the Seventh Circuit Electronic Discovery Pilot Program; as a Committee Member of the Southern District of New York Advisory Committee on Judicial Improvements; and on The Sedona Conference® Steering Committee for Working Group 1 on Electronic Document Retention and Production. She has served on the Steering Committee of *In re Target Corporation Customer Data Security Breach Litigation*; as Interim Lead Counsel in *Frito-Lay North America, Inc. “All Natural” Litigation*, *In re ConAgra Foods, Inc., Bevans v. General Mills, Inc.*, and *In re Kellogg v. General Mills*; Co-lead Counsel in *Ironworkers District Council of Philadelphia & Vicinity Retirement & Pension Plan v. Andreotti* (a stockholder derivative action, which resulted in a trial and \$1 billion judgment); and notably, as court-appointed Plaintiffs’ Liaison Counsel, Lead Counsel and Executive Committee Member in the *Initial Public Offering Securities Litigation*.

Should this Court see fit to appoint Mr. Ward and me to the Plaintiffs’ Steering Committee, all of these talented and experienced men and women agree to serve all plaintiffs, and to protect the rights of the consumers of this country with us. The *Millington* co-counsel CVs have been attached to this letter with my own.

We are all committed to immediately turn our full resources to this time-consuming litigation. I would like to suggest that Mr. Ward and I be appointed to any steering committee involving discovery in this case. However, I emphatically state that we are all similarly committed to work effectively to any role this Court appoints us with other plaintiffs’ counsel

¹ http://www.nytimes.com/2008/12/31/us/31burris.html?_r=0

and defense counsel.

Finally, I note that the firm Morgan & Morgan of Florida supports this application for both Jasper Ward and me for appointment to the Plaintiffs' Steering Committee, representing the *Millington* group. John A. Yanchunis of that firm is currently representing over 600 injured owners in this MDL, and has a long-standing professional relationship with us both in several MDLs and class action litigations.

General Edmisten and I intend to appear at the hearing on this matter before this Court, and I hope to have the opportunity to personally address any questions this Court may have.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'P. Whalen', with a long horizontal flourish extending to the right.

Paul C. Whalen, Esq.